IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5890 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAY RAMLOT GUPTA

Versus

STATE OF GUAJRAT

Appearance:

MR VAIBHAV A VYAS for Petitioner

MR IM PANDYA AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/05/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Ahmedabad City, on 27th of January, 2005, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as a dangerous person from 27th of January, 2005 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials in arriving at the subjective satisfaction. Firstly, the detaining authority took into consideration two crimes registered against the petitioner for the offences punishable under the Indian Penal Code. Secondly, the detaining authority took into consideration two in-camera statements, as recorded by the sponsoring authority on 12th of January, 2005 and 20th of January, 2005, as verified by the detaining authority on 25th of January, 2005. The identify of the witnesses is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. Both the crimes came to be registered against the petitioner before Amrailwadi Police Station, on 6th of February, 2004 and on 22nd of December, 2004. In first case, it was alleged that, on 5th of February, 2004, at about 2.30 hours, the petitioner and his accomplices trespassed the house of the complainant and witnesses and asked them to give the keys of the cupboard. On refusal, the witness was beaten and was injured. As per the allegation, the petitioner demanded Rs.50,000/- and therefore, this offence came to be registered under Sections 323, 294 (b), 452, 427 and 114 of the Indian Penal Code. While it was alleged in the second crime that on account of enmity with one Baldevabhai Vasrambhai of Vikasnagar, on 21st of December, 2004, at 11.00 p.m. when complainant and witness of the case was sitting on a bench near Gayatrinagar water tank of Block No.16, the petitioner and his other 8 accomplices approached them on 3 motorcycles with weapons like sword, revolver. The witness and the complainant were threatened and injured. This offence also came to be registered under Sections 143, 147,148, 149, 307, 323, 506(2) and 294(b) of the Indian Penal Code and under Section 135(1)of the Indian Arms Act. The detaining authority took into consideration thoroughly and exhaustively the investigation papers in both the cases and came to the conclusion that the petitioner was a habitual offender.

4. Out of two in-camera statements, one witness

referred to an incident of 11th of December, 2004. In the evening at about 5.00 p.m., the witness was at his residence and he was approached by the petitioner and his accomplice along with one revolver and cartridges. The petitioner insisted that the said revolver and cartridges should be preserved and concealed by the witness because he was apprehended by the police. On refusal by the witness, he was beaten and threatened to kill. The second incident is of 4th of January, 2005. At about 6.00 p.m. the witness was passing through Amraiwadi New Cotton Mill Cross Roads. He was approached by the petitioner and his accomplices and witness was told that the petitioner and his friends intended to go outside of the town and were need of Rs. 1,500/-. They attempted to extort the amount of Rs. 1,500/- from the witness. On refusal by the witness, he was beaten by the petitioner and his accomplices and extorted an amount of Rs.1,500/- from the witness. Though a crowd was gathered but the same was dispersed on account of fear of the petitioner. So the public order was disturbed.

5. Relying upon the above material, the detaining came to the conclusion that the petitioner was engaged in anti-social and illegal activities of committing offences like robbery and harassing innocent citizens. The detaining authority came to the conclusion that the petitioner was a dangerous person within the meaning of the PASA Act. In view of detaining authority, the petitioner was ferocious, dangerous and of violent temperament and after forming gang of ferocious person to execute his illegal activities, was in habit of administering threats to the innocent citizens and to beat them. The detaining authority came to the conclusion that the illegal activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forthwith. After considering other remedial measures available against the petitioner under the general law, the detaining authority reached to the subjective satisfaction that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order of detention of the petitioner under the PASA Act, as aforesaid which is under challenge in this petition.

6. Learned advocate Mr V.A.Vyas for the petitioner and learned AGP Mr.I.M.Pandya AGP for the respondents were heard at length. The affidavit-in-reply as filed by the detaining authority, as placed on record by the learned AGP, is also taken into consideration. Learned Advocate Mr. Vyas for the petitioner submitted a xerox

copy of notice of a bail application served upon the sponsoring authority on 22nd of January,2005 in the Criminal Case shown at Sl.No.2 in the ground of detention. The said xerox copy of the notice is taken on record.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue whether the detaining authority firstly applied mind properly to the relevant papers and whether vital and relevant facts were placed before the detaining authority to arrive at the subjective satisfaction.

8. It is an undisputed fact that the first offence came to be registered against the petitioner on 6th of February, 2004, in which he was released on bail by the competent court. Thereafter, the second crime came to be registered on 26th of December, 2004 and as aforesaid, the sponsoring authority recorded in-camera statements. From the affidavit-in-reply, it also becomes very clear that the proposal was made by the sponsoring authority to the detaining authority on 24th of January, 2005 as it is averred in para-7 of the affidavit-in-reply. Learned Advocate for the petitioner submits that in second crime i.e. Crime Register No. 799 of 2004, a bail application was moved by the petitioner on 20th of January,2005, the hearing of the bail application by the competent court was posted on 25th of January, 2005. The notice of hearing of the said bail application was served upon the investigation agency on 22nd of January, 2005, which is evident from the xerox copy of the notice placed on record by the learned Advocate for the petitioner. It is also undisputed fact that the sponsoring authority in the present case was also the investigating officer in the said crime No. 799 of 2004. Meaning thereby that, on the date of making proposal by the sponsoring authority i.e. on 24.1.2005, the sponsoring authority was well aware that the application of bail was preferred by the petitioner- detenu before the competent court, and hearing was posted on 25th of January, 2005. However, it appears that this relevant material fact was not placed by the sponsoring authority before the detaining authority. This is so because in ground of detention at page 17 while dealing with this situation, the detaining authority mentioned that though in first case the petitioner detenu was on bail and in second case he was in judicial custody. The detaining authority also further observed that in the second case in which the petitioner detenu was in judicial custody, but, however,

at any time, the petitioner was likely to move an application for bail and was likely to be released on bail and after releasing on bail, the petitioner was likely to continue his illegal activities. This conclusion of the detaining authority clearly reveals the vital fact that the petitioner detenu had already preferred an application for bail, and the fact of serving of notice of hearing of the said bail application on the sponsoring authority, which was fixed on 25th of January, 2005, was never placed before the detaining authority.

9. In the matter of V.C. MOHAN vs. UNION OF INDIA AND OTHERS, as reported in (2002) 3 SCC 451, in para-13, the Apex Court observed as under :

"By reason of the aforesaid, we feel it expedient not to express any opinion as regards the question of delay rendering the charges stale or being too remote. A statute has been engrafted in the statute book but that does not, however, mean and imply that the official concerned would be at liberty to whittle down the liberty of the citizens of the country. The constitutional sanction for preventive detention cannot be said to be without any limitation and apprehending such a conduct of the officials concerned, the founding fathers probably laid down its safeguards from the misuse of the powers as conferred. The hallmark of the concept of justice, as is available in the justice delivery system of the country is that the conduct of the detaining authority or as a matter of fact any governmental authority ought to be fair and reasonable. The accepted methodology of governmental working should always be in tune with the concept of fairness and not dehors the same - a person is being placed under detention without trial and neither there is any scope for overzealous nor acting in a manner without due and proper application of mind - in either of the situation law courts should be able to protect the individual from the administrative ipse dixit. The draconian concept of law has had its departure quite sometime back and rule of law is the order of the day. It is the rule of law which should prompt the law courts to act in a manner, fair and reasonable having due regard to the nature of the offences and vis-a-vis the liberty of the citizens. The order as passed by the Settlement Commission on 15.2.2001 directing

> the detenu to make payment of the additional duty as noticed above, cannot but be termed to be a very relevant material having a direct impact on the issue and in the event of non-placement of the same before the detaining authority, question of affirmation of the detention order would not arise. The observations of this Court in Rajindra v. Commr. of Police, Nagpur Division, recording the need and requirement of the Central government officials to be alive to the situation cannot but be said to be apposite in the context."

10. The rule of law is non-placing of relevant material before the detaining authority by sponsoring authority renders the order of detention illegal irrespective of the enormity or gravity of the alleged offence committed by the detenu. This reveals non-application of mind by the detaining authority, vitiating the order of detention. In the present case, the fact of filing bail application in the second case by the petitioner detenu was a relevant fact and was not placed before the detaining authority. The order under challenge therefore requires to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by the Police Commissioner, Ahmedabad City, on 27th of January, 2005, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Vijay Ramlot Gupta is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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